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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

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Decision

Matter of: CAE USA, Inc.

File: B-293002; B-293002.2

Date: January 12, 2004

David B. Apatoff, Esq., and Michael E. Ginsberg, Esq., Arnold & Porter, for the protester.

Helaine G. Elderkin, Esq., Carl J. Peckinpaugh, Esq., and Charles S. McNeish, Esq., for Computer Sciences Corporation, the intervenor.

Harlan F. Gottlieb, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the protester's and awardee's proposals submitted in response to a solicitation for the design, development, operation and maintenance of an aircraft simulation facility is denied where the record shows that the agency's evaluation of proposals was reasonable and in accordance with the evaluation criteria, and the protester's contentions represent only its disagreement with the agency's evaluation.

DECISION

CAE USA, Inc. protests the award of a contract to Computer Sciences Corporation (CSC) under request for proposals (RFP) No. N61339-02-R-0076, issued by the Orlando Naval Air Systems Command, Training Systems Division, for the design, development, operation and maintenance of a simulation training facility.¹ CAE protests the evaluation of proposals and the selection of CSC's higher-priced, higher-rated proposal for award.

We deny the protests.

¹ The program is known as the Flight School XXI (FSXXI) simulation services program.

BACKGROUND

The Army Aviation Center at Fort Rucker, Alabama, currently trains and prepares helicopter pilots for combat missions. The agency explains that the procurement here is the result of its determination that “future flight school pilot simulation training be provided by a long-term (19½ years) services type contract.” Under this RFP, “all aviation simulation trainers are to be built, owned, operated and maintained by a single contractor.” The contractor will also provide “all logistical support, to include implementing technology upgrades into the simulators, scheduling all simulation training and ensuring that all simulators remain current with the latest aircraft hardware and software configurations.” Contracting Officer’s Statement at 2. In short, the purpose of the solicitation is for the Army to acquire “a world-class helicopter pilot simulation training program based upon a contractor ‘turn-key’ type operation.”² Agency Report (AR), Tab M, Proposal Analysis Report/Business Clearance Memorandum/Source Selection Document (BCM), at 1.

The RFP required that the successful contractor achieve “Initial Operational Capability” (IOC) within 15 months of contract award. To achieve IOC, the contractor must deliver at least 30 percent of the TH-67 simulators proposed (but no fewer than eight), accredited by the agency as ready for training, along with associated training capability. The contractor is also required to achieve a second IOC within 18 months of contract award; in order to achieve this IOC, the contractor must deliver at least six advanced aircraft virtual simulators (AAVS), as well as associated training capability. The contractor is required to reach all aspects of full operational capability within 57 months of contract award. RFP at 37.

The RFP provided for the award of a fixed-price requirements contract, for a base period of 6 months with 19 1-year option periods, to the offeror submitting the proposal representing the best value to the government, based upon the following evaluation factors listed in descending order of importance: technical/management, performance risk/past performance, price, and small disadvantaged business (SDB) participation/small business subcontracting plan. The RFP advised that the technical/management factor was significantly more important than the performance risk/past performance factor, and that all non-price factors, when combined, were significantly more important than price. The solicitation stated that the technical/management factor was comprised of the following equally-weighted subfactors: recognition and understanding of service requirements; effectiveness and efficiencies of services; program management; proposed statement of work (SOW); and proposed integrated master schedule, integrated master plan, safety

² The simulators provided will be for the Longbow, Kiowa Warrior, Chinook, Blackhawk and TH-67 training aircraft.

assessment report, quality assurance plan, and requirements traceability matrix.³ The performance risk/past performance factor was comprised of the following subfactors listed in descending order of importance: relevant past performance, schedule, and cost/price controls. The RFP also provided that “[t]he Government intends to evaluate proposals and award a contract without discussions,” and cautioned offerors that “each initial offer should contain the Offeror’s best terms from a Technical/Management and Price standpoint.” RFP at 99.

The RFP contained detailed instructions for the preparation of written proposals and oral presentations. With regard to written proposals, the RFP provided for the submission of copies of the slides that comprise the oral presentations regarding the technical/management requirements, a technical/management proposal, a performance risk/past performance proposal, a price/administrative proposal, and a SDB proposal. The solicitation cautioned here that “a proposal must be internally consistent or the proposal will be considered unrealistic and may be considered unacceptable.” RFP at 80.

With regard to the technical/management proposal, the RFP requested that the written proposal include the following three sections: recognition and understanding of service requirements, effectiveness and efficiencies of services, and program management. The RFP advised offerors that the requirements set forth in the RFP’s SOO and SSRD were to be addressed in the written technical/management proposal. Offerors were also to provide a SOW in their written proposals that “delineate[s] all tasks necessary to achieve the objectives of the FSXXI Simulation program throughout the life of the contract,” and were advised that the SOW was to “describe what work is to be accomplished” and be based on the SOO and SSRD. RFP at 88. Additionally, the technical/management proposal was to include an integrated master plan, integrated master schedule, and a quality assurance plan. The RFP also stated that the successful offeror’s SOW, integrated master plan, integrated master schedule, and quality assurance plan would be incorporated into the awarded contract.

The solicitation informed offerors that oral presentations would be limited to 4 hours in length, and detailed what the offerors were to describe during the presentations.

³ The integrated master plan was to identify key events critical to the simulation program’s success. RFP at 87. The integrated master schedule was to identify activities and tasks sufficient to “demonstrate a detailed understanding” of the program and that implement the master plan. RFP at 86. The requirements traceability matrix was to cross-reference each requirement set forth in the simulation services requirements document (SSRD) and statement of objectives (SOO) with the offeror’s proposed SOW. RFP at 89. The SOO provided “the Government’s overall objectives for [the] solicitation,” RFP at 79, and the SSRD sets forth the agency’s stated requirements for the FSXXI program.

For example, with regard to the facilities to be provided by the successful contractor, the RFP (at 83) stated as follows:

Describe your Training Facility Implementation Plan. Identify the location of the facilities you plan to utilize. If you plan to utilize Government owned facilities, describe the facility modifications you will make to accommodate your training solution, what additional facilities are required and how you will provide them, what training devices you will put in what facilities, and how you will integrate facility operations. If your proposal includes off-post facilities for student training, describe how the facilities will be used for training, and the distance (in miles) of these facilities to Fort Rucker, Alabama.

The agency received written proposals from CSC and CAE by the RFP's closing date, and oral presentations were conducted. CSC's proposal was evaluated as "highly satisfactory" with "low" proposal risk under the technical/management factor, "very low" risk under the performance risk/past performance factor, and "unsatisfactory" under the SDB participation/small business subcontracting plan factor, at an evaluated price of \$1,085,000,000.⁴ CAE's proposal was evaluated as "[DELETED]" with "[DELETED]" proposal risk under the technical/management factor, "[DELETED]" risk under the performance risk/past performance factor, and "[DELETED]" under the SDB participation/small business subcontracting plan factor, at an evaluated price of \$912,383,865. AR, Tab M, BCM, at 5. The agency, due to the evaluated weaknesses and deficiencies in the offerors' proposals, established a competitive range of both offerors, conducted discussions, and requested final proposal revisions.

CSC's revised final proposal was evaluated as "highly satisfactory" with "low" proposal risk under the technical/management factor, "very low" risk under the performance risk/past performance factor, "marginal" under the SDB participation/small business subcontracting plan factor, at an evaluated price of \$1,108,000,000. In evaluating CSC's proposal under the technical/management factor, the agency identified 13 "enhancing features," 49 proposal "strengths," and 2 proposal "weaknesses." AR, Tab M, BCM, at 5.

⁴ Proposals were evaluated under the technical/management and SDB participation/small business subcontracting plan factors as "outstanding," "highly satisfactory," "satisfactory," "marginal," or "unsatisfactory," and under the technical/management factor were assigned proposal risk ratings "which address[] potential impacts of proposed processes, methodologies, approaches and concepts on performance, schedule and price" of "low," "medium," or "high." The proposals were evaluated under the performance risk/past performance factor as "very low," "low," "medium," "high," "very high," or "unknown." AR, Tab M, BCM, at 3-4.

CAE's revised final proposal was evaluated as "[DELETED]" with "[DELETED]" proposal risk under the technical/management factor, "[DELETED]" risk under the performance risk/past performance factor, "[DELETED]" under the SDB participation/small business subcontracting plan factor, at an evaluated price of \$948,970,244. Specifically, in evaluating CAE's proposal under the technical management factor, the agency identified [DELETED] "enhancing features," [DELETED] proposal "strengths," and [DELETED] proposal "weaknesses." The agency noted that the evaluation of CAE's proposal as "[DELETED]" with "[DELETED]" risk under the technical/management factor was "primarily based upon" two aspects of CAE's proposal: (1) CAE's "facility plan is confusing and ambiguous," and (2) the "lack of substantive description across all technical proposal documents led the [agency] to believe that CAE did not have a clear understanding of the FSXXI" requirements. *Id.* at 5, 7.

The agency determined that CSC's higher-rated, higher-priced proposal represented the best value to the government. In reaching this conclusion, the agency noted, among other things, that the proposal's rating of "highly satisfactory" with "low" risk under the most important technical/management factor "demonstrates CSC's thorough understanding of FSXXI simulation services requirements," and that "CSC's proposed off-post facility solution is a well-planned approach, which should minimize any delivery schedule slip and poses no known cost risks to the Government." In contrast, the agency noted that the rating of CAE's proposal under the technical/management factor of "[DELETED]" with "[DELETED]" risk reflected "disconnects between one proposal document or section and another, and a revised facilities plan that is confusing and ambiguous." The agency concluded that the "enhancing features and proposal strengths denoted in CAE's Revised Final Proposal were not of enough merit to overcome the significant problems with the proposal[']s lack of substantive technical descriptions and cost/schedule risks inherent in CAE's facility approach." AR, Tab M, BCM, at 8-10. Award was made to CSC.

CAE requested and received a debriefing. During the debriefing, the agency provided CAE with CAE's and CSC's overall ratings and evaluated prices, as well as CAE's factor by factor ratings. The agency also informed CAE during the debriefing that its proposal's "[DELETED]" rating under the technical/management factor was primarily the result of its revised facility plan and the agency's view that CAE's proposal lacked "substantive descriptions" regarding how "CAE will accomplish their SOW commitments." CAE was also provided with a list of each of the evaluated enhancing features, strengths, and [DELETED] weaknesses in its proposal. CAE Debriefing Slides at 18-30.

In addition, in response to CAE's protest filed with our Office on October 8, the agency, on October 24 and 30 (prior to the submission of the agency report), provided our Office and the parties relevant documents under protective order,

including, for example, the awardee's and protester's proposals, individual evaluator worksheets, proposal evaluation reports, and the BCM.⁵

ANALYSIS

Technical/Management Evaluation of CAE's Proposal

CAE argues that the agency's evaluation of proposals under the technical/management factor was unreasonable. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

CAE first argues that the agency acted unreasonably in downgrading CAE's proposal because of the agency's evaluated concerns regarding CAE's facility plan. The RFP provided relatively detailed information regarding the facilities to be provided by the contractor. The RFP stated that facilities could consist of existing or new on-post facilities, and/or off-post facilities. With regard to on-post facilities, the solicitation identified three buildings with space available, including the Aviation Warfighting Simulation Center (AWSC), and stated, for example, that "[i]f modifications to existing, government owned buildings are required, the plans for those modifications must be submitted to the government for approval." With regard to new on-post facilities, the RFP provided that "new facilities can be authorized by the government to specifically support FSXXI Simulation training," and specified that "[t]he contractor will construct and own the building, but the land on which the building is constructed will be leased from the government." RFP, SSRD at 36. The agency identified one particular site (referred to as Site 500) as a potential location for a new on-post facility. Offerors were cautioned, however, "Fort Rucker does not have authority to authorize lease/construction of new facilities on-post," and estimated a "24-month processing time" for such an authorization, which "represents a worst-case estimate, but it is not unrealistic based on past experience." RFP, attach. 7, Questions and Answers, No. 147.

With regard to off-post facilities, the RFP required that they "be located within a ten mile radius" from the AWSC on Fort Rucker, and advised offerors that the successful contractor would be responsible for the soldiers' transportation to and from the facility, as well as their safety during transportation and while at the facility. The

⁵ CAE's receipt of these documents led to CAE's filing of a supplemental protest on November 3.

solicitation also stated that the contractor would “be responsible for all costs associated with off post facilities including acquisition of land or buildings, building modification and/or construction, utilities, building maintenance, grounds maintenance, janitorial services, telephone service, internet connections, and administrative and simulation [local area network] and [wide area network] capabilities and connections.” RFP, SSRD, at 36-37.

In evaluating CAE’s proposal, the agency found that CAE’s proposed facility plan provided for the use of space in the AWSC, and the construction of either a new on-post building on Site 500 or a new off-post building. CAE’s proposal provided that the determination as to whether to proceed with new construction on-post or off-post would be made after contract award, and that “[t]he determination of which site to use to go forward can be made quickly based on factors balancing the long term good, available schedule, and the level of championing that can support on-post efforts.” AR, Tab A2, CAE Proposal, Technical/Management Volume, at 25.

The agency found that this aspect of CAE’s proposal constituted a “significant weakness” because, among other things, CAE’s plan provided for only 6 months in which to get the new on-post construction at Site 500 approved, rather than the 24 months noted by the agency in the question and answers provided to the offerors. AR, Tab H, Initial Technical/Management Proposal Evaluation Report, § 2, Tab B, at 5; Tab I, CAE Discussions Letter, encl. 1 at 3. The evaluators also noted that “CAE proposed several off-post locations,” and that “[t]here was much discussion” by the agency evaluators “on three of [CAE’s] proposed locations, as they appear[ed] to actually be on post.” AR, Tab H, Initial Technical/Management Proposal Evaluation Report, § 2, Tab B, at 5. The agency informed CAE during discussions that its “proposed schedule for construction of a facility on-post . . . was evaluated and found to be a significant weakness in light of the approximate known time to obtain” approval for the construction, and that in the agency’s view, CAE’s construction schedule “presents considerable schedule risk even with the mitigation plan . . . proposed.” AR, Tab I, CAE Discussions Letter, encl. 1, at 3.

CAE responded by revising its proposal to provide for “a new purpose-built facility constructed at a site contiguous to Ft. Rucker.” AR, Tab A2, CAE Revised Proposal, Technical/Management Volume, at 87. CAE asserted in its revised proposal that its new off-post site selection “eliminates schedule constraints posed by on-post construction,” and that the facility would be ready to accept certain simulators 11 months after contract award. *Id.* at 87, 91. CAE stated that its revised approach “allows the new facility to become an on-post solution, by limiting access to the contiguous site only through Fort Rucker and establishing an appropriate boundary to the surrounding community.” CAE’s proposal also provided, however, that it “wishe[d] to continue to pursue the use of [on-post] site 500, with the Facilities IPT [integrated product team], as a parallel effort to the selected contiguous site.” CAE stated here that “[t]his will allow the new facility to be constructed closer to the AWSC that is preferred for reasons of student flow and logistics.” AR, Tab A6, CAE

Compendium Response to Discussions, at 30. The Facilities IPT proposed by CAE was to be chaired by a CAE “Facility Manager,” and be comprised of certain CAE and Army personnel. CAE stated that it proposed to “form the Facilities IPT immediately following contract award to begin discussions about Facility options which might further enhance [CAE’s] Facility plan.” AR, Tab A2, CAE Revised Proposal, Technical/Management Volume, at 90.

The agency concluded in evaluating CAE’s final revised proposal under the technical/management evaluation factor that “CAE’s greatest weakness is still their facility plan, as it affects so many other items across the proposal.” AR, Tab K, Final Proposal Evaluation Report, Tab B, at 8. This was in part due to the agency’s view that CAE’s revised facility plan was “confusing and ambiguous.” AR, Tab M, BCM, at 9. In this regard, the agency noted that although CAE had revised its facilities plan in its final revised proposal, it had failed to amend, among other things, its proposed integrated master schedule or integrated master plan to reflect the revisions to its facility plan. AR, Tab K, Final Proposal Evaluation Report, at 7. That is, CAE’s integrated master schedule and integrated master plan referenced the approvals or planning necessary to build a new on-post facility, and made no mention of the planning or approvals necessary for a new contiguous off-post facility.⁶ See AR, Tab A, CAE Revised Proposal, app. C, Integrated Master Schedule; app. D, Integrated Master Plan.

With regard to the new off-post facility proposed by CAE, the agency noted that CAE’s proposed off-post location “has little infrastructure (water, sewer, phone, etc.) to support such a facility,” that “[t]ime to install infrastructure would likely have an adverse effect on the facility timetable,” and that CAE’s facilities plan lacked “any significant description of steps taken, or to be taken, to deal with numerous infrastructure issues.” AR, Tab K, Final Proposal Evaluation Report, Tab B, at 9; Tab M, BCM, at 9.

The record also reflects the agency’s concern with CAE’s plan of pursuing the construction of a facility on-post at Site 500 “in parallel” with its plan to consider the construction of a new off-post facility. For example, the agency expressed concern that CAE’s “approach to ‘finalizing’ their facilities plan after award places the government at risk for possible claims of government caused delays if government IPT members raise issues which could impact the final facilities plan.” The agency also concluded that CAE’s “indecision on facility location creates great risk that CAE will not meet its own delivery schedule.” In sum, the agency determined that “CAE’s

⁶ For example, CAE’s integrated master plan continued to state that CAE “has concluded that the FSXXI solution best fits into a new purpose built facility constructed on Ft. Rucker and modifications to the Aviation Warfighting Simulation Center (AWSC).” AR, Tab A, CAE Revised Proposal, app. D, Integrated Master Plan, at 21.

facilities plan, coupled with their aggressive delivery schedule for simulators and training schedule for aviators, is fraught with risk of delays in training which would severely impact Ft. Rucker's need to train aviators with modern simulation technology." AR, Tab M, BCM, at 9.

The protester argues that its proposal included a reasonable amount of information regarding its revised facility plan, and that the agency should not have been confused by CAE's revised proposal, contending that "CAE specifically and unequivocally revised its facility proposal from an on-[post] facility to an off-[post] facility on land contiguous to Ft. Rucker." Protester's Comments at 19. With regard to its proposed off-post facility, CAE points out that its revised proposal included an aerial photograph of its proposed off-post facility location, a facility layout for its off-post facility, and a construction schedule, and thus argues that the agency "was on notice that CAE had spent time investigating in detail the off-[post] properties proposed for the building and had worked with local authorities." Protest at 6; see AR, Tab A2, CAE Proposal, Technical/Management Volume, at 88-91. The protester also argues that, contrary to the agency's evaluation, nothing in the RFP required a proposal to address infrastructure issues that may affect a particular building site.

With regard to its proposed on-post Site 500 facility, CAE contends that the agency's concern regarding the time for approval of such construction was unfounded because "CAE is highly experienced with constructing flight simulator facilities around the world, and is intimately familiar with what is required." The protester also claims here that "it employs a number of former high level employees from Ft. Rucker with experience with accelerating facility construction at Ft. Rucker." Supplemental Protest at 6. Finally, the protester argues that the agency's evaluated concerns that CAE's proposed continued pursuit of the on-post Site 500, in addition to the proposed off-post site are unfounded, given CAE's proposed pursuit of "both options *in parallel*."⁷ Protester's Comments at 20.

⁷ CAE also argues for the first time in its comments on the agency report that the agency's identification of on-post Site 500 as a possible location for a facility during the solicitation process was inappropriate, given the agency's evaluated concerns with CAE's proposed use of that site, and that the agency's evaluation of its and CSC's facility plans evidences unequal treatment. Our Bid Protest Regulations provide that protests which are not based upon alleged solicitation improprieties must be filed not later than 10 days after the basis of protest is known or should have been know (whichever is earlier). 4 C.F.R. § 21.2(a)(2) (2003). The timeliness of a specific basis of protest raised after the filing of the initial protest bases depends upon the relationship the later-raised bases bear to the initial protest. Where the later raised bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements; conversely, where the later raised bases merely provide additional support for an earlier, timely raised protest basis, we will consider the later-raised arguments. Vinnell Corp., B-270793; B-270793.2,

(continued...)

Despite the protester's disagreement, we cannot find the agency's evaluated concerns regarding CAE's facility plan to be unreasonable or inconsistent with the RFP. First, we find reasonable the agency's view that CAE's revised facility plan was somewhat confusing. As mentioned previously, and as conceded by the protester, the integrated master schedule and integrated master plan included with CAE's revised proposal continued to reference the approvals or planning necessary to build a new on-post facility, and made no mention of the planning or approval necessary for a new contiguous off-post facility. Given the revised proposal's reference to CAE's proposed use of an off-post site for a facility, as well as the stated desire to "continue to pursue" the use of on-post Site 500, the agency reasonably found CAE's proposal confusing in this regard. We also cannot find unreasonable the agency's view that CAE's proposed plan of pursuing the use of on-post Site 500 and the off-post site "in parallel" for its new-construction facility, and making a decision sometime after award as to which location will actually be used, creates risk that the facility will not be available for use in the timeframe proposed by CAE or required by the solicitation, given the delay that may be occasioned by CAE's decision-making process here.

Nor can we find the agency's concern that CAE's proposed off-post site for its facility lacked the infrastructure necessary to support such a facility unreasonable or inconsistent with the RFP. In this regard, the protester does not rebut or otherwise challenge the agency's statement that the off-post site proposed by CAE is undeveloped and lacks infrastructure, or the agency's determination that this lack of infrastructure may negatively affect CAE's ability to comply with its proposed or the solicitation's mandatory IOC schedules. Contrary to the protester's arguments, the agency's concerns here were consistent with the technical/management evaluation factor, which provided for an assessment of the offerors' ability to meet the solicitation's requirements, including the construction of any proposed facility.

In sum, we find reasonable the agency's evaluation of CAE's facility plan.⁸ Given that CAE has not timely challenged any of the remaining 25 evaluated weaknesses in its

(...continued)

Apr. 24, 1996, 96-1 CPD ¶ 271 at 7. In our view, CAE's arguments here are distinct from CAE's protest that the evaluation of its facility plan was unreasonable because, in CAE's view, its proposal included a reasonable amount of information regarding its revised facility plan. Accordingly, because CAE was or should have been aware of each of these arguments from its receipt on October 24 and 30 of relevant documents from the agency, its arguments here, raised for the first time in its comments on the agency report filed with our Office on November 25, are untimely and will not be considered.

⁸ The protester also complains with regard to the evaluation of its facilities plan that the record reflects that one member of the evaluation panel "had a disproportionate impact on the outcome of the panel's evaluation." Protester's Comments at 10; see

(continued...)

proposal, we have no basis to object to the agency's evaluation of CAE's proposal as "[DELETED]" under the technical/management factor.⁹

CSC's Proposal's Compliance with Concurrency Requirement

The protester argues that the agency's evaluation of CSC's proposal under the technical/management factor as "highly satisfactory" with "low" proposal risk was unreasonable because CSC's proposal failed to demonstrate how it would "maintain concurrency of the virtual simulators." Supplemental Protest at 2.

(...continued)

Supplemental Protest at 6-7. The selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; accordingly, we will not review allegations concerning the qualifications of evaluators or composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials. Solid Waste Integrated Sys. Corp., B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23 at 6. No such showing has been made here.

⁹ As mentioned previously, CAE was provided with a list of the [DELETED] weaknesses at its debriefing. In its initial protest to our Office, CAE challenged the agency's determination with regard to [DELETED] of the weaknesses. The agency responded in detail to these CAE arguments, and the protester did not respond to the agency's position in either its comments or its supplemental comments on the agency reports. Accordingly, we consider CAE to have abandoned this aspect of its protest. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 5 n.3.

CAE argues for the first time in its comments on the agency report that the agency's identification of certain other weaknesses in CAE's proposal, regarding, for example, gunnery tables, digital and paper maps, and the simulators' capability to play back the training session, was unreasonable and reflected unequal treatment with regard to the agency's evaluation of CSC's proposal. In response to the agency's position that these arguments are untimely, the protester points out that in its initial protest to our Office it generally asserted "[o]n information and belief" that the agency evaluated CAE's and CSC's proposals "inconsistently," and that because of this, its specific arguments alleging unequal treatment in its comments, filed with our Office on November 25, are timely. Protest at 2; Protester's Supplemental Comments at 8. We disagree. Presenting a general allegation in an initial protest does not render timely subsequently submitted specific examples of the alleged general flaws in a procurement. Sierra Military Health Servs., Inc.; Aetna Gov't Health Plans, B-292780 et al., Dec. 5, 2003, 2004 CPD ¶ ___ at 13 n.9; see LeBoeuf, Lamb, Greene & McRae, B-283825; B-283825.3, Feb. 3, 2000, 2000 CPD ¶ 35 at 11-12. Accordingly, because the protester received the documents relevant to its protest on October 24 and 30, the specific examples of alleged unequal treatment, raised by protester for the first time on November 25, are untimely.

As explained by the agency, the “simulator cockpit should look the same as the actual aircraft,” and “[t]he controls should also respond in a manner similar to actual aircraft controls.” AR at 32. Because of these requirements, the SSRD provided that “[c]oncurrency of the [simulators] must be maintained,” that is, when the actual aircraft are modified, the simulators must be modified as well. RFP, SSRD, at 9. The RFP (at 84) instructed offerors to address the concurrency issue in their proposals as follows:

Describe your approach to provide concurrency and technology upgrades for the virtual simulators and simulation environment, and to provide updates to the associated training products and system documentation. Identify how the concurrency and technology upgrade requirement will be supported in terms of planning, development, implementation, offerors Testing/Government RFT [ready for training] accreditation, data acquisition, relationships/agreements with other members of industry and/or Government, etc. Describe how you will ensure that concurrency and technology upgrades to hardware, software, and courseware can be easily and effectively incorporated throughout the life cycle of the [FSXXI] simulator system.

CSC’s proposal included a lengthy and detailed discussion of its approach to maintaining simulator concurrency, included sections describing its approach to planning, developing, implementing, and acquiring data for concurrency upgrades. AR, Tab B1, CSC’s Proposal, Technical Management Written Proposal, at II-41A, 72-73, 86-89. CSC’s proposal noted, among other things, that it had “secured initial agreements from aircraft platform change control program stakeholders,” including two original equipment manufacturers (OEM), to “participate in the change-control process for each aircraft platform.” *Id.* at II-103. In evaluating CSC’s proposal, the agency found that CSC’s “understanding and planning for concurrency” constituted a “strength,” explaining that CSC’s proposal provided a “highly integrated approach to issues such as concurrency.” AR, Tab K, Final Proposal Evaluation Report, Tab A, at 2, 7.

The protester argues that CSC’s proposal should have been rejected because it “believes it is physically impossible for CSC to satisfy [the concurrency] requirement without a data arrangement in place with Boeing or some other right of access to Boeing’s proprietary OEM data.”¹⁰ Supplemental Protest at 3. In this regard, the protester has provided a letter from Boeing’s legal counsel stating that “it is Boeing’s belief that the Government does not have possession of much of the data that would be required to design and maintain simulators for the Apache Longbow,” and that “[w]ithout assistance from the OEM, it is Boeing’s belief that the Government could

¹⁰ Boeing is the OEM for the Longbow aircraft and is teamed with CAE for this acquisition.

not provide another company with data sufficient to enable that company to design or maintain a simulator that replicates the Apache Longbow.” The letter adds that “the CSC team has made no approach to Boeing to even discuss the potential for an agreement to permit access to Apache Longbow technical data,” and that “[i]n the future event that CSC or an associated team member would approach Boeing to obtain such technical and performance data, Boeing would be strongly disinclined as it has in the past to provide such information to a competitor.” Protester’s Comments, exh. 4, Letter from Boeing’s Counsel to CAE (Nov. 20, 2003).

The solicitation, however, did not include any requirement for offerors to provide, or otherwise demonstrate that they had, agreements with the OEM of the relevant aircraft in place prior to award.¹¹ Rather, the solicitation, as set forth above, instructed offerors that they were to describe their approach to providing concurrency during performance of the contract. Accordingly, CAE’s argument that CSC’s proposal should have been rejected by the agency is without merit as there simply is no requirement in the solicitation that an offeror have advance agreements with the relevant OEMs. See Orbital Technologies Corp., B-281453 et al., Feb. 17, 1999, 99-1 CPD ¶ 59 at 7.

The protester maintains in any event that because CSC did not have an advance agreement with Boeing, CSC’s proposal could not reasonably have been evaluated as posing “low” proposal risk under the technical/management factor. Again, we disagree. The fact that CSC had not reached an advance agreement with Boeing, by itself, does not render unreasonable the agency’s judgment that CSC’s proposal posed a “low” risk under the technical/management factor, given that, as mentioned above, CSC’s proposal otherwise included a detailed explanation of its approach to maintaining simulator concurrency, and provided that it had “secured initial agreements from aircraft platform change control program stakeholders,” including two aircraft OEMs.

CSC’s Proposal’s Compliance with Optimization Requirement

The protester contends that the agency’s evaluation of CSC’s proposal under the technical/management factor “[v]iolates the RFP’s Optimization Requirement.” Protester’s Comments at 57; see Supplemental Protest at 9-10.

As indicated, offerors were requested by the RFP to “define their training solution, the analysis they conducted to develop their training solution, and their program management concept.” Contracting Officer’s Statement at 18. The solicitation did not specify the quantities of the differing simulators to be provided by the contractor in order to accomplish the training; rather, it required offerors to identify the

¹¹ As pointed out by the agency, CAE does not have such agreements in place with certain of the OEMs of other relevant aircraft. AR at 33-34.

quantity of simulators proposed, and, among other things, explain how the quantities proposed were determined, and how the training estimated would be accomplished with the quantities proposed. RFP at 83; SSRD, at 32. Appendix B to the RFP's SSRD explains in this regard as follows:

The requirements for numbers and types of simulators were intentionally structured to allow maximum flexibility on the part of the contractor to determine the most cost effective solution for the contractor and government. The government will pay for simulator time regardless of how many simulators there are. It is the contractor's responsibility to provide the number and type of simulators to meet the stated training requirement, and to the contractor's advantage to provide the fewest simulators required. Again, it is the contractor's responsibility to ensure that the number and type of simulators and hours of availability are provided to meet the training requirement within the training day constraints identified [elsewhere in the solicitation].

RFP, SSRD, app. B, at B-16.

CAE and CSC proposed nearly identical numbers of two types of simulators referenced in the RFP. Specifically, CAE proposed to provide 19 TH-67 simulators and 21 AAVSs, while CSC proposed to provide 20 TH-67 simulators and 19 AAVSs. AR, Tab A2, CAE Proposal, Technical/Management Volume, at 56, 68; Tab B2, CSC Proposal, Technical Management Written Proposal, at 29, 46. However, CSC also proposed to provide 18 "Reconfigurable Collective Training Devices (RCTDs) to accomplish collective training requirements." AR, Tab A2, CAE Proposal, Technical/Management Volume, at 46.

The agency viewed the RCTDs proposed by CSC as a "strong enhancement" to CSC's proposal. AR at 35. In this regard, the agency noted, in evaluating CSC's proposal as "highly satisfactory" under the technical/management factor, that the RCTDs proposed by CSC "allow[] for the expansion of collective virtual simulation over the next two decades with few foreseeable problems in scheduling," and "eliminate[] potential for conflicts when scheduling assets for collective and individual training, and allows for the training of an entire battalion task force of any mix of aircraft with no interference with individual training." AR, Tab K, Final Proposal Evaluation Report, Tab A, at 5; Tab M, BCM, at 5.

In pursuing this aspect of its protest, CAE points out that in response to an industry question regarding the scheduling of courses or exercises to optimize the use of simulators, the agency responded as follows:

It is not in the Government's or Contractor's advantage to overestimate numbers of simulators and end up with significant available, but

unused simulator time. It is the Government's expectation that the Contractor will propose, based on a thorough analysis, the most cost and training effective solution with minimum second and third order effects on other resources.

RFP, attach. 7, Questions and Answers, No. 68. The protester contends that this statement indicated that "the government was placing a premium on efficient use of resources, and wanted proposals that would minimize excess simulators, down time and extra simulators using excess space." Supplemental Protest at 9. The protester points out that the agency "appeared to concur . . . that CAE's 40 simulator approach met the RFP's training requirements," and concludes that because of this, the agency's evaluation of CSC's proposal was unreasonable in this regard because "CSC's solution, with 17 additional simulators, does not minimize simulator downtime." Supplemental Protest at 10; Protester's Supplemental Comments at 55.

First, we agree with the agency that the RFP did not include an "optimization requirement" as argued by the protester. Rather, the RFP read as a whole requested that offerors propose, among other things, a training solution as well as the number of simulators needed to accomplish the training based upon the solution proposed. The solicitation did not restrict the number of simulators to be proposed, except to the extent that the number of simulators proposed was to be consistent with the offeror's approach to accomplishing the training required.

The record reflects that the number of simulators proposed by CAE was considered to be adequate, while the greater number proposed by CSC (at a presumably greater cost) was found to be an enhancing feature of CSC's proposal. In our view, there is nothing unreasonable or impermissible with regard to the offerors' somewhat differing approaches to accomplishing the training requirements, nor the agency's evaluation thereof. The differing approaches appear to reflect nothing more than the offerors' differing business judgments in the context of this best-value procurement.¹²

¹² CAE argues for the first time in its comments on the agency report that the agency favorably evaluated CSC's proposal with regard to the RCTDs proposed because the agency could use the RCTDs "to cross subsidize" another agency contract. The protester complains that this constitutes a "hidden award criterion." Protester's Comments at 55-57. The agency argues that this CAE argument is untimely because here too CAE received the documents relevant to its protest on October 24 and 30, and that the protester's argument here thus should have been raised in its supplemental protest to our Office. In response, the protester, while conceding that this argument is based on those documents, contends that this allegation "simply helps to make sense of the old allegation" regarding the purported "optimization requirement." Protester's Supplemental Comments at 5. In our view, CAE's argument that the agency favorably considered the number of simulators proposed by CSC because the agency could use the simulators to support another agency

(continued...)

Performance Risk/Past Performance Evaluation

CAE argues that the agency's evaluation of CSC's proposal as "very low" risk under the performance risk/past performance evaluation factor was unreasonable. Specifically, the protester argues that the agency should have downgraded CSC's proposal here because of "poor performance on a previous related contract to provide AVCATT (Aviation Combined Arm Tactical Trainer-Advanced Reconfigurable Manned Simulator) simulators." Supplemental Protest at 8.

The agency responds that CAE has not shown that the agency's past performance evaluation was unreasonable, and points out that, in any event, CAE's proposal was also evaluated as having "very low" risk under the performance risk/relevant past performance factor, even though there have been "significant delays on CAE's contract with [the agency] for the Apache Combat Simulator Upgrade" that "CAE did not mention in its past performance submission," so that CAE was not prejudiced by the agency's asserted failure to adequately consider CSC's performance on the AVCATT contract. AR at 34. The agency also points out with regard to prejudice that "[e]ven if we hypothetically assume that CSC's past performance rating should have been 'worse,' the significant difference in technical/management ratings would have led to the same conclusion—that CSC provided the best value to the Government." Agency Supplemental Report at 40.

The protester responds that in its view its performance on the Apache Combat Simulator Upgrade contract mentioned above is less relevant to this contract than CSC's AVCATT contract, but does not substantively respond to the agency's position in its supplemental report or otherwise explain how CAE was prejudiced by the agency's allegedly unreasonable evaluation in this regard.

Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies, such as an unreasonable or unequal evaluation of proposals, is found. Leisure-Lift, Inc., B-291878.3; B-292448.2, Sept. 28, 2003, 2003 CPD ¶ __ at 10; Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 9.

(...continued)

contract provides no support for, and is distinct from, CAE's argument that the agency's evaluation was inconsistent with the RFP's purported "optimization requirement." See Vinnell Corp., supra. Accordingly, this protest basis, raised by protester for the first time in its comments to our Office filed on November 25, is untimely.

Given CSC's proposal's significantly higher rating of "highly satisfactory" with "low" proposal risk in comparison to CAE's proposal's rating of "marginal" with "medium" risk under the most important technical/management factor, the fact that "relevant past performance" was one of three subfactors to the "performance risk/past performance evaluation factor," and that the record evidences that CAE had similar performance problems to those allegedly had by CSC and received, as did CSC, a past performance rating of "very low" risk, we fail to see any reasonable possibility that the protester was prejudiced by the agency's actions concerning its failure to consider CSC's alleged problems under the AVCATT contract.

The protests are denied.

Anthony H. Gamboa
General Counsel